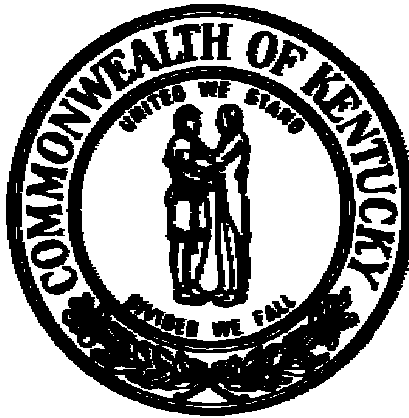


LAWS AND REGULATIONS RELATING TO

Licensure as a Hearing Instrument Specialist



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The statutes and regulations provided in this booklet are an *unofficial* version of the Kentucky Revised Statutes and Kentucky Administrative Regulations and are intended for informational purposes only. The official or certified versions of the Kentucky Revised Statutes and Kentucky Administrative Regulations should be consulted for all matters requiring reliance on the statutory text.

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Kentucky Revised Statutes

334.010 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the Kentucky Licensing Board for Specialists in Hearing Instruments.

(2) "License" means a license issued by the board under this chapter to specialists in hearing instruments.

(3) "Apprentice permit" means a permit issued while the applicant is in training to become a licensed specialist in hearing instruments.

(4) "Hearing instrument" means any wearable instrument or device designed for or represented as aiding or improving defective human hearing and any parts, attachments, or accessories of such an instrument or device.

(5) "Practice of fitting hearing instruments" means the measurement of human hearing by means of an audiometer for the purpose of making selections, adaptations, and adjustments of hearing instruments. The term also includes the making of ear mold impressions and custom earmolds.

(6) "Sell or sale" means any transfer of title or transfer of the right to use by lease, bailment, or any other means.

(7) A used or not new hearing instrument is one (1) that has been the subject of a sale and the title to which was held by the client for a period longer than thirty (30) days.

(8) "Client" means the user or purchaser of the hearing instrument.

(9) "Specialist in hearing instruments" means any individual licensed under this chapter.

(10) "Apprentice" means any applicant in training to become a licensed specialist in hearing instruments.

(11) "Sponsor" means a licensed specialist in hearing instruments qualified under KRS 334.090(8) who assumes professional responsibility for an apprentice.

334.020 Requirement of license or permit.

No person shall engage in the sale or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself as a person who practices the sale or fitting of hearing instruments unless he holds an unsuspended, unrevoked license issued by the board pursuant to KRS 334.080, or unless he holds a current, unsuspended, unrevoked apprentice permit pursuant to KRS 334.090. The license or permit shall be conspicuously posted in each office or place of business.

334.030 Requirement of written agreement, offer to purchase, or receipt -- Contents -- Right to cancel -- Delivery statement -- Solicitation provisions.

(1) Any person who practices the sale or fitting of hearing instruments shall obtain from the buyer of a hearing instrument, at the time such buyer assumes any financial obligation with respect to the purchase, the buyer's signature on a written and dated agreement, offer to purchase, or receipt. The written agreement, offer to purchase, or receipt shall contain the following information:

(a) Licensee's signature, printed name and business address, and license number issued to the licensee by the board pursuant to this chapter;

(b) Make, model, and serial number of the hearing instrument;

(c) Immediately following the information required by subsection (1)(a), (b), and

(d) of this section, shall be the statement, in all capital letters in no smaller type than the largest used in the body copy portion, that: ANY COMPLAINTS CONCERNING THE SALE OR SERVICE OF THIS HEARING INSTRUMENT WHICH ARE NOT CORRECTED BY THE SPECIALIST IN HEARING INSTRUMENTS SHOULD BE DIRECTED TO: KENTUCKY

LICENSING BOARD FOR SPECIALISTS IN HEARING INSTRUMENTS, COMMONWEALTH OF KENTUCKY, FRANKFORT, KENTUCKY 40601; and

(d) Notice and statement of the purchaser's thirty (30) day right to cancel pursuant to KRS 334.210.

(2) The written agreement, offer to purchase, or receipt shall bear in no smaller type than the largest used in the body copy portion the following statement: "The purchaser has been advised at the outset of his relationship with the specialist in hearing instruments that any examination(s) or representation(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore shall not be regarded as medical opinion or advice."

(3) Upon delivery of a hearing instrument, the client shall be furnished a delivery statement which shall include specifications as to the make, model, serial number, and delivery date, with full terms of the sale clearly stated. If a hearing instrument which is not new is offered for sale or is sold, that fact shall be clearly stated and conspicuously disclosed and read in the oral sales presentation before the buyer assumes any financial obligation with respect to the purchase, and the receipt shall be clearly marked as "used," "reconditioned," or "not new," whatever is applicable, with terms of guarantee, if any.

(4) No person who practices the selling or fitting of hearing instruments shall visit the home or place of business of a potential buyer for the purpose of soliciting or inducing a sale of a hearing instrument without having obtained, prior to any visit, the expressed written consent of the potential buyer to such a visit. The consent required by this subsection shall clearly and conspicuously state that the potential buyer is aware that the specialist in hearing instruments may attempt to sell a hearing instrument during his visit.

334.040 Exemptions from application of chapter.

(1) This chapter shall not apply to a person while he is engaged in the practice of fitting hearing instruments and assistive listening devices if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public, charitable institution or nonprofit organization, which is primarily supported by voluntary contributions.

(2) This chapter shall not be construed to prevent any person who is a medical or osteopathic physician licensed to practice in the Commonwealth of Kentucky from treating or fitting hearing instruments to the human ear, which includes the making of ear molds, or to an audiologist holding a certificate of clinical competence in audiology from the American Speech-Language-Hearing Association so long as they do not engage in the sale of hearing instruments.

334.050 Qualifications of applicant for licensure.

An applicant for licensure under this section shall pay a fee established by the board by the promulgation of an administrative regulation and shall show to the board that he:

- (1) Is a person of good moral character;
- (2) Is twenty-one (21) years of age or older;
- (3) Has a minimum of a high school diploma or a general education development certificate;
- (4) Is a citizen of the United States or has status as a legal alien;
- (5) Is free of contagious or infectious disease; and
- (6) Has completed the apprenticeship requirements of the formal education as provided by KRS 334.090.

334.060 Examination not to include degree of competence required of physician or audiologist -- Examination of applicants to be given at least annually.

(1) An applicant for licensure who is notified by the board that he has fulfilled the requirements of KRS 334.050 shall appear at a time, place, and before such persons as the board may designate and pass written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing instruments. The examination administered shall not be conducted in a manner that college training is required in order to pass. Nothing in the examination shall imply that the applicant shall possess the degree of medical competence normally expected of a physician, or of audiological competence of a certified audiologist.

(2) The board shall give at least one (1) examination of the type prescribed in subsection (1) of KRS 334.070 each year, and such additional examinations as the volume of applications may make appropriate.

334.070 Scope of examination.

The examination required in KRS 334.060 shall consist of:

- (1) Tests of knowledge pertaining to fitting of hearing instruments including:
 - (a) Basic physics of sound;
 - (b) The anatomy and physiology of the ear, including the science of hearing causes and rehabilitation of abnormal hearing and hearing disorders; and
 - (c) The function of hearing instruments.
- (2) Practical tests of proficiency in the following techniques pertaining to the fitting of hearing instruments:
 - (a) Pure tone audiometry, including air conduction testing and bone conduction testing;
 - (b) Speech audiometry, including live voice or recorded voice speech evaluations which include speech reception threshold testing, most comfortable listening level, loudness discomfort level, and speech discrimination testing;
 - (c) Masking when indicated;
 - (d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaption of a hearing instrument; and
 - (e) Taking earmold impressions.

334.080 Issuance of license -- Reciprocity -- Qualifications of applicant holding master's degree in audiology.

(1) Upon payment of a fee, established by the board by promulgation of an administrative regulation, the board shall register each applicant who satisfactorily passes the examination. Thereupon the board shall issue to the applicant a license.

The license shall be effective for one (1) year.

(2) Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for practice of selling or fitting of hearing instruments, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to sell or fit hearing instruments, the board may issue a license to those applicants who hold current, unsuspended, and unrevoked licenses to sell or fit hearing instruments in such other state or jurisdiction upon application and successful completion of examination. No applicant for a license pursuant to this subsection shall be required to submit to or undergo any training or other procedure, other than the payment of fees and examination pursuant to KRS 334.050 to 334.070. The holder of a license issued under this subsection shall be registered in the same manner as holders of initial licenses. The fee for licenses issued under this subsection shall be the same as the fee for an initial license. Fees, grounds, and procedures for renewal, suspension, and revocation of licenses issued under this subsection shall be the same as for renewal, suspension, and revocation of initial licenses.

(3) Any applicant holding a master's degree in audiology licensed under KRS Chapter 334A or holding at least a master's degree from a recognized college or university and having the certification of clinical competence in audiology from the American Speech-Language-Hearing Association shall not be required to submit to or undergo any training or other procedures other than the payment of fees and successful completion of examination pursuant to KRS 334.050 to 334.070. Fees, grounds, and procedures for renewal, suspension, and revocation of license issued under this subsection shall be the same as for renewal, suspension, and revocation of initial licenses.

334.090 Apprentice permit -- Training stages -- Renewal of permit -- Sponsorship of apprentices.

(1) An applicant who fulfills the requirements of KRS 334.050 may apply to the board for an apprentice permit as provided by the board by the promulgation of an administrative regulation. The fee shall be established by the board by the promulgation of an administrative regulation.

(2) The apprenticeship period shall be for twelve (12) months as follows:

(a) Stage I -- The apprentice shall work for thirty (30) days under the direct control of a sponsor. The apprentice shall not in any way fit or test the client for the purpose of selling hearing instruments.

(b) Stage II -- This training stage shall last for one hundred fifty (150) days. During this period the apprentice may conduct testing necessary for the proper selection and fitting of a hearing instrument, and make ear impressions. During this period the apprentice shall be under the direct supervision of his sponsor or a licensed specialist in hearing instruments who shall also qualify as a sponsor as defined in subsection (8) of this section. During this period the apprentice shall not make delivery or final fitting without direct personal supervision during the actual delivery.

(c) Stage III -- This training stage shall last for one hundred eighty (180) days. The apprentice may engage in all activities of a licensed person. He shall, however, work under and be responsible to a licensed sponsor for the remainder of the apprentice period.

(3) The stages provided in subsection (2) of this section shall be completed with no interim time lapse between stages. If the apprentice leaves his place of training without approval of his employer, he shall forfeit seniority, and revert to stage I, subject to appeal to the board.

(4) After completion of the stages provided in subsection (2) of this section, the apprentice shall take the qualifying examination given by the board for a license and upon successfully passing the examination and paying the appropriate fee, may obtain a license.

(5) If a person who holds an apprentice permit issued under this section takes and fails to pass the qualifying examination, the board may renew the apprentice permit as provided by the board by the promulgation of an administrative regulation. A fee established by the board by the promulgation of an administrative regulation shall be paid prior to reexamination.

(6) Apprentice permit holders shall be governed by all administrative regulations and standards of ethical conduct pertaining to regular licensees.

(7) The satisfactory completion of a course in the selling or fitting of hearing instruments approved by the board may be considered equivalent to stages I and II of the apprenticeship period.

(8) No person shall sponsor an apprentice unless he is a licensed specialist in hearing instruments with a minimum of three (3) years' experience, has obtained NBC-HIS board certification, or has a current license issued pursuant to this chapter on or before December 31, 1992. No sponsor may have more than two (2) apprentices at one (1) time. The sponsor shall be responsible for all sales and service of the apprentices and all monetary reimbursements.

334.100 Licensees' and apprentices' duty to notify board of location.

(1) Every person who holds a license or an apprentice permit shall notify the board in writing of the location where he engages or intends to engage in the practice of selling or fitting hearing instruments or where the person is in training.

(2) The board shall keep a record of each location where a licensee or apprentice intends to practice or train.

(3) Any notice required to be given by the board to a person who holds a license or apprentice permit may be given by mailing it to the last known address of the licensee or apprentice.

334.110 Renewal of licenses -- Fee.

Each person who engages in the selling or fitting of hearing instruments shall annually, on or before January 30, pay to the board a fee to be established by the board by the promulgation of an administrative regulation for a renewal of his license. Where more than one (1) office is operated by the licensee, duplicate certificates shall be issued by the board for posting in each location. A thirty (30) day grace period shall be allowed after January 30, during which time licenses may be renewed on payment of a late fee and penalty to be established by the board by the promulgation of an administrative regulation. The board may suspend the license of any person who fails to renew his license before the expiration of the thirty (30) day grace period. After the expiration of the grace period, the board may in its discretion renew the license upon the payment of an additional fee to be established by the board by the promulgation of an administrative regulation. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, if the renewal application is made within two (2) years from the date of expiration.

334.120 Complaints -- Procedure -- Disciplinary sanctions -- Prohibited conduct.

(1) Complaints against licensed persons shall be handled by the board in the following manner:

(a) Any person desiring to make a complaint against a licensee under this chapter shall reduce the complaint to writing and file it with the board.

(b) The board may conduct an investigation into any complaint which the board feels may constitute a violation of this chapter or the administrative regulations promulgated thereunder.

(c) The board may require that the licensee file a statement or report in writing as to the facts and circumstances concerning the complaint together with other information, material, or data reasonably related thereto.

(d) The board may request the assistance of the Attorney General in connection with an investigation.

(e) The board may employ the services of a hearing officer to conduct hearings, prehearing conferences, advise the board as to legal matters, and provide other legal services deemed appropriate by the board.

(2) If the board determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter shall be suspended, revoked, or subject to reprimand or fine, it shall conduct a hearing in accordance with KRS Chapter 13B.

(3) The provisions of this chapter shall in no way limit the jurisdiction and authority of the Attorney General to take any necessary action under the Kentucky Consumer Protection Act, KRS 367.110 to 367.300.

(4) The board may suspend, revoke, or levy a fine not to exceed one thousand dollars (\$1,000), refuse to issue or renew any license for a fixed period of time, place on probation, issue a written reprimand to a licensee, or any combination thereof, based on a finding of the board after hearing that a person licensed under the provisions of this chapter has committed any of the following acts:

- (a) Change of personal name, corporate name, charter, entity, or partnership name or composition to avoid the imposition of liens or court action;
- (b) The conviction of a felony, or a misdemeanor involving moral turpitude. The record of conviction, or a copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of that conviction;
- (c) Procuring of license by fraud or deceit practiced upon the board;
- (d) Unethical conduct as defined by the board by promulgation of an administrative regulation;
- (e) Engaging in any unfair, false, misleading, or deceptive act or practice;
- (f) Incompetence or negligence in the practice of selling or fitting hearing instruments; or
- (g) Violating any provision of this chapter or the administrative regulations promulgated thereunder.

334.130 Forgery, fraud, deceit, collusion, or conspiracy concerning licensure prohibited.

No person shall:

- (1) Sell, barter, or offer to sell or barter a license or apprentice permit.
- (2) Purchase or procure by barter a license or apprentice permit with intent to use it as evidence of the holder's qualification to practice the selling or fitting of hearing instruments.
- (3) Alter a license or apprentice permit with fraudulent intent.
- (4) Use or attempt to use as a valid license or apprentice permit, a license or apprentice permit which has been purchased, fraudulently obtained, counterfeited, or materially altered.
- (5) Willfully make a false statement in an application for license or apprentice permit or application for renewal of a license or apprentice permit.
- (6) Sell, barter, or offer for sale or barter any brand or model of hearing instrument not having the approval of the board for reasonable merchantability and workmanship.

334.140 Kentucky Licensing Board for Specialists in Hearing Instruments.

- (1) There is created the Kentucky Licensing Board for Specialists in Hearing Instruments.
- (2) The board shall be composed of nine (9) members who shall be appointed by the Governor. Terms of office shall be at the Governor's discretion, not to exceed four years. All terms shall expire on July 31 of the designated year. Each member shall serve for the term of his appointment and until his successor has been appointed and qualified. If a vacancy occurs on the board, a new member shall be appointed to serve out the unexpired term. No member shall serve consecutive terms on the board. Upon recommendation of the board, the Governor may remove any member of the board for excessive absenteeism, neglect of duty, or malfeasance in office.
- (3) Five (5) members shall be specialists in hearing instruments licensed under KRS 334.080. The appointees shall have at least five (5) years' relevant experience. The Governor shall consider nominations from the Hearing Aid Association of Kentucky. No two (2) members from the same place of business may serve on the board at the same time.
- (4) One (1) member shall be a physician licensed to practice medicine in Kentucky and specializing in otology or otolaryngology.
- (5) One (1) member shall be an audiologist holding at least a master's degree from a recognized college or university and having the certification of clinical competence in audiology from the American Speech-Language-Hearing Association and licensed under KRS Chapter 334A.
- (6) One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated.
- (7) One (1) member shall be the secretary of the Cabinet for Health Services or his designee.
- (8) Five (5) members of the nine (9) members of the board, when properly convened, may conduct the business of the board.

334.150 Powers and duties of the board.

The powers and duties of the board shall be as follows:

- (1) To authorize all disbursements necessary to carry out provisions of this chapter.
- (2) To prepare and administer qualifying examinations to test the knowledge and proficiency of applicants for licensing.
- (3) To license persons who apply to the board and who are qualified to practice the fitting of hearing instruments.
- (4) To purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for licensing.
- (5) To issue and renew licenses.
- (6) To suspend, revoke, refuse to issue, or renew licenses, impose probationary or supervisory conditions, issue letters of reprimand, or levy fines against a licensee, or any combination thereof.
- (7) To appoint representatives to conduct or supervise the examination of applicants for licensing.
- (8) To designate the time and place for examining applicants.
- (9) To promulgate administrative regulations consistent with the laws of this Commonwealth which are necessary to carry out the provisions of this chapter.
- (10) To require the periodic inspection of audiometric testing equipment and to carry out the periodic inspection of facilities of persons who practice the fitting of hearing instruments.
- (11) To employ secretaries, attorneys, inspectors, clerks, or any other employees that the board may deem necessary to carry out the provisions of this chapter. The board may employ or discharge at its discretion.
- (12) To initiate a formal educational program consistent with the intent of this chapter in that the consumer public shall be served by the specialist in hearing instruments trained in the latest technology in fitting hearing instruments.
- (13) To promulgate administrative regulations establishing requirements and standards for continuing education.
- (14) To administer oaths and to require the attendance of witnesses, the production of books, records and papers pertinent to any matters coming before the board by the issuance of process which shall be served and returned in the same manner as in civil actions and for the disobedience of which the board shall have by resort to a court of competent jurisdiction the power to invoke the same rights as are provided in the event of disobedience of a subpoena or subpoena duces tecum in a civil action.

334.160 Meetings of board -- Officers -- Disposition of fees -- Compensation.

- (1) The board shall meet at least once a year at times and places to be designated by the board and upon such notice as the board may prescribe. At its first meeting each calendar year, the board shall elect a chairman, vice chairman, and secretary-treasurer, each to serve in his respective capacity for one (1) year.
- (2) Fees, charges, and other moneys collected by the board shall be paid into the State Treasury and credited to a trust and agency fund to be used to pay expenses in administering this chapter. All moneys shall be received, disbursed, and accounted for by the board or its designee. All moneys not expended by the board to pay expenses in administering this chapter shall be retained by the board from year to year to be expended for the purposes expressed in this chapter.
- (3) Each member of the board shall be paid a reasonable sum, not to exceed one hundred dollars (\$100) per day, for each day of actual service on the board and shall be reimbursed all reasonable and necessary travel expenses.

334.170 Division of Occupations and Professions to provide assistance.

The Division of Occupations and Professions in the Finance and Administration Cabinet shall provide administrative aid to the board to assist it in the discharge of its duties.

334.180 Reinstatement of license -- Appeal from order refusing, suspending, or revoking license.

(1) A licensee whose license has been revoked may petition the board for reinstatement. The board shall investigate the petition and may reinstate the license upon finding that the individual has complied with any terms prescribed by the board and is again able to engage in the practice of fitting hearing instruments.

(2) A licensee or applicant aggrieved by an order of the board refusing, suspending, or revoking a license may within thirty (30) days after notice thereof appeal thereupon to the Franklin Circuit Court. The appeal shall be determined by the court upon the certified record and no new or additional evidence shall be heard or considered by the court. Either party aggrieved by a final order entered by the court may appeal to the Court of Appeals as in a civil action.

334.190 Exception to examination for license -- Qualifications.

For a period of six (6) months following June 16, 1972, an applicant for a license shall be issued a license without examination provided applicant:

(1) Has been principally engaged as a hearing aid dealer or fitter for a total period of at least two (2) continuous years within a period of three (3) years immediately prior to June 16, 1972;

(2) Is a person of good moral character;

(3) Is eighteen (18) years of age or older; and

(4) Is free of contagious or infectious disease.

334.200 Requirements for sale or fitting of hearing instruments.

(1) No individual licensed under this chapter shall sell or fit a hearing instrument to any person unless within the preceding ninety (90) days:

(a) The person has been examined by and received a written, signed, and dated approval for a hearing instrument from a duly licensed physician. The written approval shall include a statement that the person examined has no known ear diseases or conditions of the ear which might make the fitting and wearing of a hearing instrument useless, or harmful to the person's health, or which might interfere with the proper fitting and wearing of a hearing instrument; and,

(b) The person has received a hearing instrument evaluation, and a written, signed, and dated recommendation for a hearing instrument from a physician or an audiologist licensed or authorized to practice audiology pursuant to KRS Chapter 334A. The written recommendation may take the form of a specific recommendation as to the make and model of a hearing instrument or may include a listing of specifications for a hearing instrument.

(2) Any client eighteen (18) years of age or older may elect to sign a waiver to the requirements of subsections (1)(a) and (b) of this section before the purchase of a hearing instrument. The waiver shall be on a separate sheet of paper, shall be read to the prospective purchaser of a hearing instrument, and shall recite: "I have been advised by the seller (name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician and preferably a physician who specializes in diseases of the ear before purchasing a hearing instrument. I do not wish a medical evaluation before purchasing a hearing instrument." The waiver shall be dated and signed by seller and client.

(3) Any person licensed to sell hearing instruments under this chapter shall maintain for not less than three (3) years, in a file under the name of the person to whom a hearing instrument was sold, a true copy of the written approval pursuant to subsection (1)(a) of this section; and a true copy of the written recommendation for a hearing instrument pursuant to subsection (1)(b)

of this section or the waiver of such written recommendation pursuant to subsection (2) of this section, and a true copy of the written agreement, offer to purchase, or receipt given the person, pursuant to KRS 334.030(1).

334.210 Client's right to cancel -- Procedure.

(1) The client in a hearing instrument purchase, has the right to cancel the purchase for any reason at any time prior to midnight of the thirtieth calendar day after actual receipt of the hearing instrument.

(2) Cancellation occurs when the client gives written notice of cancellation to the seller at the address stated in the notice and statement of the client's right to cancel provided for in subsection (5) of this section.

(3) Notice of cancellation, if given by mail, is given when it is deposited in the mail properly addressed and postage prepaid.

(4) Notice of cancellation given by the client need not take a particular form and is sufficient if it indicates by a form of written expression the intention of the client not to be bound by the hearing instrument sale.

(5) In the sale of a hearing instrument, the seller shall present to each client, at the time the client assumes any financial obligation with respect to the purchase of a hearing instrument, a written notice and statement of the client's right to cancel which shall:

(a) Appear under the conspicuous caption; "CLIENT'S RIGHT TO CANCEL WITHIN 30 DAYS," and

(b) Contain the following specific statement in all capital letters in no smaller type than the largest used in the body copy portion of the written agreement, offer to purchase, or receipt: "THE CLIENT HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO MIDNIGHT OF THE 30TH CALENDAR DAY AFTER ACTUAL RECEIPT OF THE HEARING INSTRUMENT(S). YOU MAY CANCEL THE PURCHASE BY NOTIFYING THE SELLER THAT YOU DO NOT WANT THE HEARING INSTRUMENT(S) BY MAILING A NOTICE BEFORE TO THE SELLER AT: UPON CANCELLATION, THE SELLER MAY KEEP UP TO 10% OF THE SELLING PRICE."

(6) The seller shall enter on the notice and statement required by subsection (5) of this section the date which is thirty (30) calendar days from the date on which the client receives the hearing instrument(s); the seller's full name and address; and the cancellation charges allowed by this section.

(7) Until the seller has complied with this section, the client may cancel the purchase by notifying the seller in any manner and by any means of his intention to cancel.

(8) Within fifteen (15) days after the return of the hearing instrument or instruments and any other goods or property delivered by the seller pursuant to the sale by the client, the seller shall tender to the client any payments made by the client, less any amount retained by the seller to repair damage to the hearing instrument due to a lack of reasonable care of the hearing instrument purchased, and terminate all financial obligations created in connection with the purchase of the canceled hearing instrument or instruments by the client.

(9) If payment by the client includes any goods or property traded in, the goods or property shall be tendered to the client in substantially as good condition as when they were received by the seller. If the seller fails to tender the goods or property as provided by this subsection, the client may elect to recover an amount equal to the trade-in allowance for the goods or property.

(10) The provisions of this section shall not apply to a sale of a hearing instrument that replaces a damaged or unworkable hearing instrument, when the replacement hearing instrument is identical to the damaged or unworkable hearing instrument.

(11) Until the seller has complied with the obligations imposed by this section, the client may retain possession of all goods or property delivered to him by the seller and has a lien on the goods or property in his possession or control for any recovery to which he is entitled.

(12) The client has a duty to take reasonable care of the goods, as defined by the board by promulgation of an administrative regulation, in his possession before cancellation and for a reasonable time thereafter until delivered to the seller.

(13) Any waiver by the client of rights provided in this section is void, and shall not operate to relieve the seller of any obligation placed upon him by this section.

(14) Nothing in this section shall in any way limit the right to cancel home solicitation sales, pursuant to KRS 367.410 to 367.460.

334.990 Penalties.

(1) Violation of any provision of this chapter is a misdemeanor punishable, upon conviction, by a penalty not to exceed two thousand five hundred dollars (\$2,500) for each failure to comply with the orders of the board concerning each violation of law or administrative regulation concerning specialists in hearing instruments or by imprisonment in the county jail for not more than ninety (90) days, or both.

(2) In addition to any other action authorized by law, the Attorney General may enforce provisions of this chapter by civil action for injunctive relief in any court of competent jurisdiction. In an action to obtain an injunction, it shall be sufficient to allege and prove that a violation of this chapter has occurred or is about to occur, and it shall not be necessary to allege or prove that any person has been misled or deceived by an unethical conduct or that any person has been damaged or sustained any loss as a result of any violation of this chapter.

Kentucky Administrative Regulations

201 KAR 7:010. Definitions.

RELATES TO: KRS 334.010, 334.020, 334.040, 334.050(9), 334.100, 334.190

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: In order to regulate the practice of selling and fitting hearing instruments, it is necessary to define terms related to the practice of fitting and selling hearing instruments. This administrative regulation establishes those terms and their definitions.

Section 1. In addition to the definitions in KRS 334.010, and, unless the context otherwise requires:

(1) "The time the buyer assumes any financial obligation with respect to the purchase" shall be deemed to be the moment when the buyer authorizes the purchase of the hearing instrument.

(2) "Place of business" means an established address where the client may have personal contact and counsel with the fitter or seller of hearing instruments and obtain service during normal business hours.

(3) "Selling price" shall be the gross purchase price of the hearing instrument or instruments less any discounts granted.

201 KAR 7:015. Fees.

RELATES TO: KRS 334.050, 334.080, 334.090, 334.110

STATUTORY AUTHORITY: KRS 334.050, 334.080, 334.090, 334.110, 334.150

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 334.050, 334.080, 334.090 and 334.110 and sets forth in detail all fees charged by the board.

Section 1. Application Fees Schedule. The following fees shall be paid in connection with all types of hearing instrument specialist applications:

(1) The application fee for an apprentice permit shall be fifty (50) dollars.

(2) The application fee for a license shall be fifty (50) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the licensure examinations required by the board:

(1) The fee for the National Institute for Hearing Instrument Studies Examination shall be ninety-five (95) dollars.

(2) The fee for all portions of the state examination shall be seventy-five (75) dollars.

(3) The fee for an individual portion of the state examination shall be fifteen (15) dollars per portion.

Section 3. Original License Fees. The original license fee shall be \$150 for an applicant who successfully completes all portions of the examination and application processes.

Section 4. Renewal Fees and Penalties. A person holding a license shall not practice in this state after March 2 of the year in which the license is to be renewed unless the license has been renewed as provided by law and payment of the prescribed fee has been made. A license not renewed by March 2 following the expiration date shall be deemed expired and a person holding an expired license shall not engage in the practice of fitting and selling hearing instruments. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure shall be \$150.

(2) The late renewal fee, including penalty, for the grace period extending from January 31 to March 2 shall be \$200.

(3) The renewal fee for renewal of licensure after March 2, including penalty, shall be \$250.

Section 5. Duplicate License Fees. The fee for a duplicate license shall be twenty-five (25) dollars.

201 KAR 7:020. Educational and health qualifications of applicants.

RELATES TO: KRS 334.050, 334.080, 334.090, 334.160(3)

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to delineate and clarify the procedures required of all applicants and to specify the requirements of compliance with the educational and health qualifications of applicants.

Section 1. Applications. The following principles and procedures shall govern all applicants:

(1) Applications shall be made directly to the board and shall be accompanied by the required fee.

(2) Fees required with applications are application fees and are not refundable.

(3) In determining an applicant's fitness and qualifications, the board shall require:

(a) A listing of references;

(b) A physician's statement that the applicant is free of infectious or contagious disease;

(c) Verification of age; or

(d) Other supporting information or documents.

Section 2. Health Requirements. Affliction with a contagious or infectious disease, which renders the practice of fitting hearing instruments by the licensee, apprentice or applicant dangerous to the public health or safety shall be cause for denial, nonrenewal, suspension or revocation of an apprentice permit or license.

Section 3. Request for Hearing. The board shall hold a hearing upon request of any person directly affected by the board's decision to deny an application for licensure or an apprentice permit.

201 KAR 7:025. Trial period for remade, remanufactured, or substituted hearing instruments.

RELATES TO: KRS 334.210

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334.210 provides the buyer of a hearing instrument the right to cancel the purchase within thirty (30) days of the date of purchase. This administrative regulation extends that right to hearing instruments which are substantially altered or substituted for the original instrument during the first thirty (30) day period.

Section 1. If, for any reason, a hearing instrument is remade, remanufactured, or substituted during the thirty (30) day trial period required by KRS 334.210, the required thirty (30) day trial period shall begin again on the date of delivery of the new or adjusted hearing instrument.

201 KAR 7:040. Examinations.

RELATES TO: KRS 334.060(1), 334.070, 334.080, 334.090(4), 334.150(2), (7), (8), (9)

STATUTORY AUTHORITY: KRS 334.150(2), (7), (8), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334.060(1) requires an applicant for licensure to pass a qualifying examination. KRS 334.150(2) requires the board to establish and administer the qualifying examination. KRS 334.070 establishes the content of the qualifying examination applicants for licensure are required to pass. This administrative regulation establishes the qualifying examination, passing scores, and the conditions for reexamination.

Section 1. An apprentice shall take the first qualifying examination that is scheduled after the completion of the apprenticeship period.

Section 2. Requirements for Applicants Wishing to Sit for the Examination. An applicant for examination shall furnish:

(1) Two (2) forms of identification, one (1) of which shall contain a picture of the applicant, before being allowed to sit for the examination;

- (2) An audiometer capable of air, bone, and speech conduction testing;
- (3) Proof of audiometric calibration;
- (4) Audiogram to record test results;
- (5) Earmold impression materials;
- (6) A human subject to test hearing and demonstrate earmold impression techniques;
- (7) Case history sheet; and
- (8) Otoscope.

Section 3. Qualifying Examination. The qualifying examination shall consist of the following sections:

- (1) A written examination that tests an applicant's:
 - (a) Knowledge and proficiency in the subject matters established by KRS 334.070; and
 - (b) Qualification to practice the fitting of hearing instruments;
- (2) A written examination on:
 - (a) The provisions of KRS Chapter 334 relating to specialists in hearing instruments;
 - (b) The provisions of administrative regulations governing the practice of specialists in hearing instruments, codified in 201 KAR Chapter 7;
 - (c) Conduct required or prohibited by KRS 334.120, 334.130, and the code of ethics established by 201 KAR 7:090;
 - (d) Ear molds; and
 - (e) Audiometry;
- (3) A practical examination on:
 - (a) Ear impressions;
 - (b) Audiometric testing; and
 - (c) Defective hearing instruments.

Section 4. Scoring of Examination. (1) A passing grade shall consist of a score of seventy (70) percent on each section.

(2) A candidate shall be required to retake the sections of the examination on which he fails to achieve a passing score.

(3) The board shall issue a notification to the applicant of the results of his or her qualifying examination score.

Section 5. Reexamination. (1) An apprentice who fails to pass any written section of the qualifying examination two (2) times shall be allowed to extend his apprenticeship if he or she has paid the renewal fees required by 201 KAR 7:015.

(2) An apprentice permit may be extended for no longer than two (2) years from the date of the second examination.

(3) An apprentice shall revert to and remain in stage two (2) of the apprenticeship period established by KRS 334.090(2)(b) until he or she passes the section of the examination that he or she failed.

201 KAR 7:050. Identification, proof of licensure.

RELATES TO: KRS 334.020

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is promulgated in order to originate compliance with the administrative regulation that an individual shall show proof of licensure while engaging in the fitting of hearing instruments.

Section 1. (1) An identification card shall be issued to each holder of a license or apprentice permit, which lists the name of the holder, along with the address of the office where his license or apprentice permit is displayed, and which he shall be required to keep in his possession at all times during the performance of his duties.

(2) Upon request of any client or prospective client, a board member, or any peace officer, he shall permit the identification card to be inspected for purpose of identification.

201 KAR 7:070. License renewal.

RELATES TO: KRS 334.110

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: To enumerate certain requirements for renewals.

Section 1. Responsibility for filing for renewal of licenses or apprentice permits and for paying fees shall rest with the individual holder. The board shall not be responsible for sending a letter of reminder.

Section 2. To renew a license, the holder shall send to the board with the renewal application the following:

(1) A copy of a certificate of calibration for the holder's audiometric testing equipment, completed within the twelve (12) months immediately preceding the date of the renewal application; and

(2) Satisfactory evidence of continuing education as required by 201 KAR 7:075.

201 KAR 7:075. Continuing education requirements.

RELATES TO: KRS 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish a continuing education program for licensed hearing instrument specialists; to set forth the basic requirements, methods of accreditation, and manner of reporting.

Section 1. Each licensee shall be required to complete a minimum of ten (10) continuing education hours in order to renew his license each year. Continuing education hours for hearing instrument specialists in excess of the number required at the time of renewal of license may not be applied to future requirements.

Section 2. A minimum of five (5) of the required ten (10) continuing education hours shall be attained through programs sponsored by entities listed in Section 3(1) of this administrative regulation. The remaining continuing education hours may be attained through any of the sources listed in Section 3 of this administrative regulation.

Section 3. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of hearing instrument specialists. They may be earned by completing any of the following educational activities:

(1) Relevant offerings provided by the following organizations or institutions and approved by the board:

(a) The Hearing Aid Association of Kentucky (HAAK);

(b) The Kentucky Speech-Language and Hearing Association (KSHA);

(c) The International Hearing Society (IHS), or any of its affiliated state chapters;

(d) The American Speech-Language and Hearing Association (ASHA), or any of its affiliated state chapters;

(e) The Academy of Dispensing Audiologists (ADA), or any of its affiliated state chapters;

(f) The American Academy of Audiology (AAA), or any of its affiliated state chapters; or

(g) The American Academy of Otolaryngology, or any of its affiliated state chapters.

(2) Relevant offerings of the following types that have been reviewed and approved by the board:

(a) Manufacturers professional seminars;

(b) Accredited schools' continuing education programs.

(3) Related areas not specifically a part of the field of hearing instruments may be approved for up to two (2) continuing education hours, if the board believes that the related areas may serve to enhance the licensee's ability to practice.

Section 4. Sponsors of continuing education programs shall be responsible for obtaining from the board accreditation for their respective continuing education programs.

(1) A sponsor shall be any person, school, association, company, corporation, or group who wishes to develop a continuing education program.

(2) Programs shall be submitted to the board at least sixty (60) days prior to planned participation so the participants can know the value of the experience prior to actual participation.

(3) Requests for program changes shall be made to and accredited by the board. Failure to make requests for program changes to the board in compliance with this subsection shall render the evaluation and accreditation of the program null and void.

(4) Repetitious completion of a program shall not entitle the participant to additional continuing education credit.

(5) Sponsors shall maintain for three (3) years records of the name of those participants who complete a program.

Section 5. Sponsors and licensees requesting approval of continuing education for hearing instrument specialists shall submit an application to the board. Licensees shall keep valid records, receipts, and certifications of continuing education hours completed for three (3) years and submit certification to the board on request.

Section 6. Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to revocation or suspension of his license as provided in KRS Chapter 334.

Section 7. Each licensee shall submit, with the annual renewal, on forms provided by the board, a list of accredited continuing education hours completed by the licensee during the previous license year. If any licensee shall fail to submit a list of continuing education hours by the first of February, the board secretary shall notify the licensee at his last known address that his license shall be subject to suspension. Upon proper application to the board a licensee may be granted a deferral on a year to year basis at the discretion of the board for reasons as illness, incapacity, or other similar extenuating circumstances. A licensee shall be exempt from the continuing education provisions for the calendar year during which his license is first issued by the board.

Section 8. Each licensee shall keep the board informed of his correct address.

201 KAR 7:090. Unethical conduct; code of ethics.

RELATES TO: KRS 334.120

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is for the purpose of defining unethical conduct as it relates to the fitting and sale of hearing instruments. It also establishes a code of ethics.

Section 1. Unethical Conduct. The following acts shall be considered to be unethical conduct in the practice of selling and fitting hearing instruments and may subject the licensee or apprentice permit holder to the sanctions set forth by KRS 334.120(4):

(1) Any violation of Federal Trade Commission or Food and Drug Administration regulations pertaining to the sale or fitting of hearing instruments;

(2) The obtaining of any fee or the making of any sale by fraud or misrepresentation;

(3) Employing directly or indirectly any suspended or unregistered person to perform any activity covered by this chapter;

(4) Using, causing, or promoting the use of any advertising material, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is false, misleading, deceptive or untruthful;

(5) Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(6) Advertising professional superiority;

(7) Falsely representing that the service or advice of a person licensed to practice medicine shall be used or made available in the:

- (a) Selection;
- (b) Fitting;
- (c) Adjustment;
- (d) Maintenance; or
- (e) Repair of hearing instruments, when that is not true;

(8) Using words, abbreviations or symbols which give the impression that service is being provided by persons trained in medicine or audiology when that is not, in fact, true;

(9) Indicating that the licensee's service is state recommended;

(10) Permitting the use of a license by a person other than the licensee;

(11) Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist; or

(12) Claiming an affiliation with a professional association which does not in fact exist or the use of a degree or title not actually earned or held.

(13) Conducting business while suffering from a contagious or infectious disease.

(14) Engaging in the fitting and sale of hearing instruments under a false name, or alias;

(15) Selling a hearing instrument to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing instruments;

(16) Gross incompetence or negligence in fitting and selling hearing instruments;

(17) Failing to comply with:

(a) Any request of the board for information;

(b) An agreed order with the board; or

(c) A directive or order by the board;

(18) Practicing while under suspension or revocation of licensure;

(19) Practicing while under the influence of alcohol or any controlled substance not prescribed by a medical doctor;

(20) Failing to make a refund in a timely manner as set forth by KRS 334.210(8);

(21) Failing to fully complete the sales agreement requirements of KRS 334.030; or

(22) Violating any of the provisions of KRS Chapter 334 or the administrative regulations promulgated thereunder.

Section 2. Code of Ethics. Hearing Instrument Specialists engaged in the practice of the testing of human hearing, and in the selection, counseling, fitting, dispensing, and servicing of hearing instruments, shall hold paramount the welfare of the client. The hearing instrument specialist shall:

(1) Utilize all resources available, including referral to other specialists as needed;

(2) Accept and seek full responsibility for the exercise of judgment within the area of his expertise. These services include the selection, counseling, fitting, dispensing, and servicing of hearing instruments;

(3) Not guarantee outstanding results from the use of hearing instruments, products, services, or counseling when this is not the case;

(4) Exercise caution not to mislead persons to expect unattainable results;

(5) Hold in professional confidence all information and professional records concerning a client and use that data only for the benefit of the client or as the law demands;

(6) Keep the welfare of the client uppermost at all times;

(7) Avoid personal invective directed toward professional colleagues or members of hearing health care professions;

(8) Not agree to practice under terms or conditions which tend to interfere with or impair the proper exercise of his professional judgment and skill, which cause a deterioration of the quality of his service, or which require him to consent to unethical behavior;

(9) Initiate and maintain records of services provided to clients;

- (10) Not participate with other health professionals or any other person in agreements to divide fees or to cause financial or other exploitation when rendering professional services;
- (11) Not delay furnishing care to clients served professionally, without just cause; and
- (12) Not discontinue services to clients without providing reasonable notice of withdrawal, providing all contractual agreements have been satisfied.

201 KAR 7:100. Procedure for processing complaints.

RELATES TO: KRS 334.120, 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to outline the administrative procedure for the processing of complaints.

Section 1. Definitions. (1) "Chairman" means the chairman of the board.

(2) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 334 or the administrative regulations promulgated thereunder by a licensee or other person.

(3) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of KRS Chapter 334 or the administrative regulations promulgated thereunder.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensee or other person and commences a formal disciplinary proceeding.

(5) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.

(6) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal disposition of any matter without further recourse to formal disciplinary procedures.

(7) "Investigative assistant" means an appropriately licensed individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) Complaints may be submitted by an individual, organization, or entity.

(2) Complaints shall be in writing and shall be signed by the person offering the complaint.

(3) The board may file a complaint based on information in its possession.

(4) A copy of the complaint shall be sent to the licensed individual named in the complaint along with a request for that individual's response to the complaint and a copy of the following documentation:

- (a) Sales contract;
- (b) Audiogram;
- (c) Signed medical waiver;
- (d) Delivery statement; and
- (e) Record of service to the client.

(5) The response of the individual shall be required for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of fifteen (15) days from the date of receipt to make a response.

(6) Failure to respond in a timely fashion may constitute unethical conduct as set forth by administrative regulation.

(7) The board shall also request from the complaining party, a copy of the following documents:

- (a) Sales contract;
- (b) Audiogram; and
- (c) Delivery statement.

Section 3. Board Review and Decision on Hearing. (1) After the receipt of a complaint, and the time period for the responses has expired, the board shall review the material received pursuant to Section 2 of this administrative regulation and shall make a determination as to the proper assignment of the complaint. At this point the board may make a preliminary determination that one (1) or more of the following conditions exist:

(a) The consumer appears to be entitled to a refund of some or all moneys paid for the hearing instrument;

(b) The individual may have violated one (1) or more sections of the statutes or administrative regulations, but there is not enough evidence to proceed without further investigation;

(c) The individual may have violated one (1) or more sections of the statutes or administrative regulations and there is sufficient evidence to proceed;

(d) The individual appears to be practicing without benefit of appropriate licensure and the matter may be pursued through criminal prosecution or injunctive relief within the court system; or

(e) The individual appears to have functioned in compliance with all appropriate statutes and administrative regulations and there appears to be no cause of action for the board to pursue.

(2) When in the opinion of the board, the complaining party appears to be entitled to a refund of some or all moneys, the board may direct the individual to make a refund.

(3) When in the opinion of the board, the information gathered indicates that a violation of the statutes or administrative regulations may have occurred, but the board does not have sufficient evidence to file a formal complaint, the board shall authorize its attorney and a designated investigative assistant to investigate the matter and report their findings to the board at their earliest opportunity.

(4) When in the opinion of the board, the information gathered indicates that the filing of a formal complaint is warranted, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 5 of this administrative regulation.

(5) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be selling and fitting hearing instruments without proper licensure, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. The complaint shall be forwarded to the county attorney of the county where the alleged violation may have occurred alleging the selling and fitting hearing instruments without appropriate licensure with a request that appropriate action be taken under KRS 334.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized sale and fitting of hearing instruments.

Section 4. Settlement by Informal Proceedings. (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately disposing of the matter.

(2) Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board.

Section 5. Notice and Service of Process. (1) Any notice required by KRS Chapter 334 or this administrative regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand-delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or if known, by service on the named individual's attorney of record, if appropriate. Refusal or service avoidance shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, that notice shall be sent to the appropriate person at least twenty (20) days prior to the hearing.

201 KAR 7:105. Hearing procedures.

RELATES TO: KRS 334.050, 334.120

STATUTORY AUTHORITY: KRS 334.120, 334.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334.120 mandates a hearing upon the filing of a complaint alleging a violation of KRS Chapter 334 or the administrative regulations promulgated thereunder. This administrative regulation establishes detailed procedures for the conduct of administrative hearings held pursuant to KRS 334.120.

Section 1. Composition of the Board for Purposes of a Hearing. (1) Disciplinary actions or appeals may be heard by a quorum of the board members eligible to hear that particular case, the board's designated hearing officer, or both.

(2) The board may appoint a licensed attorney as a hearing officer to preside over the hearing, conduct all prehearing activities, prepare findings of fact and conclusions of law at the direction of the board, and provide legal advice to the board.

(3) A board member who has participated in the investigation of a disciplinary action or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit as a member of the board hearing that particular action and shall not be considered an eligible member for purposes of determining a quorum.

(4) Staff members of the board, legal counsel for the board and a court stenographer may also be present for the hearing.

Section 2. Rights of the Respondent. (1) The respondent shall be the licensee, apprentice permit holder, or applicant.

(2) The respondent shall have the right to:

(a) Be present and to be heard at the hearing;

(b) Be represented by legal counsel;

(c) Present evidence;

(d) Cross-examine witnesses presented by the board;

(e) Make both opening and closing statements; and

(f) Have subpoenas issued in accordance with KRS 334.150(14).

Section 3. Prehearing Disclosure of Evidence. (1) By the board.

(a) The names, addresses, and phone numbers of witnesses expected to be called by the board shall be made available upon request of the respondent.

(b) Copies of documentary evidence may be obtained upon the payment of a reasonable charge therefore, except documents protected from disclosure by state or federal law.

(c) Nothing in this section shall be construed as giving the respondent the right to examine or copy the personal notes, observations, or conclusions of the board's investigators nor shall it be construed as allowing access to the work product of legal counsel for the board.

(d) The respondent shall also be permitted to examine any items of tangible evidence in the possession of the board.

(2) By the respondent.

(a) At least ten (10) days prior to the scheduled hearing date the respondent shall furnish to the investigator or legal counsel for the board copies of any documents which the respondent intends to introduce at the hearing, and a list of the names, addresses, and home and work telephone numbers of any witnesses to be presented to the board by the respondent.

(b) The respondent shall also produce for inspection any items of tangible evidence within his possession or control which he intends to introduce at the hearing.

(3) Sanctions for failure to comply with prehearing disclosure. Should a party fail to comply with this section the board hearing the disciplinary action may refuse to allow into evidence any items or testimony that have not been disclosed, may continue the action to allow

the opposing party a fair opportunity to meet the new evidence, or may make an order as it deems appropriate.

(4) Continuing duty to disclose.

(a) After disclosure has been completed, each party shall remain under an obligation to disclose any new or additional items of evidence which the party intends to introduce or witnesses the party intends to have testify.

(b) Additional disclosure shall take place as soon as practicable.

(c) Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 4. Order of Proceeding. (1) Call to order.

(a) The hearing officer shall call the hearing to order.

(b) The hearing officer shall identify the parties to the action and the persons present.

(c) The hearing officer shall read the letter of notice and charges.

(d) The hearing officer shall then ask the parties to state any objections or motions.

(e) The hearing officer shall rule upon any objections or motions, subject to being overridden by a majority vote of the members of the board.

(f) Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive opening statement.

(2) The taking of proof on behalf of the board.

(a) The taking of proof shall commence with the calling of witnesses on behalf of the board.

(b) Each witness shall be examined first by the attorney for the board, then by the respondent or that person's attorney, and finally by members of the board.

(c) Rebuttal examination of witnesses shall proceed in the same order.

(d) Documents or other items may be introduced into evidence as appropriate.

(3) The taking of proof on behalf of the respondent.

(a) Upon conclusion of the case for the board, the respondent shall call its witnesses. These witnesses shall be examined first by the respondent or that person's attorney, then by the attorney for the board, and finally by the members of the board.

(b) Rebuttal examination of those witnesses shall proceed in the same order.

(c) Documents or other evidence may be introduced as appropriate.

(4) Closing statements. At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) Decorum. The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 5. Rules of Evidence. (1) The board shall not be bound by the technical rules of evidence.

(2) The board may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law.

(3) Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the board is satisfied of its genuineness and accuracy.

(4) Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the board is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(5) The board shall retain the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious.

(6) Rulings on objections to evidence shall be made by the hearing officer but may be overridden by a majority vote of the eligible members of the board.

Section 6. Decisions by the Board. (1) Upon the conclusion of the hearing, the board shall retire into closed session for the purpose of deliberations.

(2) At the conclusion of the board's deliberations it shall propose a motion based upon the evidence presented.

(3) The hearing officer shall draft a proposed order including findings of fact and conclusions of law consistent with the board's deliberations as well as a recommended order to be submitted to the full board at a subsequent meeting.

Section 7. Final Approval by the Board. The board, at its next meeting, or as soon thereafter as may be arranged, shall review the proposed order and consider it for final approval.

Section 8. Continuances; Proceedings in Absentia. (1) It is the policy of the board not to postpone cases which have been scheduled for hearing without good cause.

(2) A request by a respondent for a continuance may be considered if communicated to the staff reasonably in advance of the scheduled hearing date and based upon good cause.

(3) The decision whether to grant a continuance shall be made by the hearing officer or chairman of the board.

(4) The burden shall be on the respondent to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

